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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

FEB 24 2009

Federal Communications Commission
Office of the Secretary

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	EB Docket No.
IN THE MATTER OF:	: 07-147
	:
PENDLETON C. WAUGH,	: File No.
CHARLES M. AUSTIN,	: EB-06-IH-2112
and JAY R. BISHOP;	: NAL/Acct. No.
	: 200732080025
PREFERRED COMMUNICATION	:
SYSTEMS, INC.,	: FRN No.
Licensee of Various	: 0003469049
Site-by-Site Licenses in	:
the Specialized Mobile	:
Radio Service;	:
	:
PREFERRED ACQUISITIONS, INC.:	: FRN No.
Licensee of Various	: 0003786183
Economic Area Licenses in	:
the 800 MHz Specialized	:
Mobile Radio Service.	:
	:

Monday,
January 26, 2009

DEPOSITION OF:

PENDLETON C. WAUGH

called for examination by Counsel for the Plaintiff, pursuant to Notice of Deposition, at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC, when were present on behalf of the respective parties:

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APPEARANCES:On Behalf of the Agency:

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On Behalf of Preferred Communication
Systems, Inc., Preferred Acquisitions, Inc.,
and Charles M. Austin:

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P-R-O-C-E-E-D-I-N-G-S

(9:29 a.m.)

WHEREUPON,

PENDLETON C. WAUGH

was called as a witness by the Defendant and,
having first been duly sworn, was examined and
testified as follows:

EXAMINATION BY COUNSEL FOR THE AGENCY

BY MR. OSHINSKY:

Q All right. Mr. Waugh, my name is
Gary Oshinsky and this is Anjali Singh, my co-
counsel. I'm going to be doing the first part
of your deposition, which will just be
basically background, general kinds of
questions, and Ms. Singh will follow up with
questions about specific documents.

Have you ever been deposed before?

A Yes, sir.

Q How many times?

A Three or four times.

Q Okay. I realize that might have
been--how long ago was that? How long ago was

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1 the last one?

2 A About 12 years ago.

3 Q Can you remember the names of the
4 cases and/or -- and the jurisdictions? I
5 guess starting with the most recent one.

6 A There was a litigation brought by
7 a guy named Toshiaki Saito. Civil litigation.

8 Q Do you remember what the caption--

9 A Probably Toshiaki Saito v.
10 Pendleton Waugh. I don't even remember.

11 Q Can you briefly describe what that
12 litigation involved.

13 A He was suing to recover a million
14 dollars that he'd invested in various programs
15 of wireless communications--actually, one
16 wireless communications program.

17 Q I'm sorry. Let me just stop you
18 cause I didn't catch the name. What
19 communications?

20 A Wireless.

21 Q Wireless. Can you spell it for
22 the court reporter.

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1 A It was just--he would--Express
2 Communications had a PCS auction program in
3 1994, and he invested a million dollars.

4 Q But this was through Express?

5 A Yes, sir.

6 Q And what jurisdiction was that?

7 A The Northern District of Texas.

8 Q Okay. Do you remember anything
9 else about it? I guess you don't remember the
10 case number after 12 years.

11 A No.

12 Q Okay. How about some of the
13 others?

14 A I was deposed in 1987, '88, by the
15 Securities and Exchange Commission.

16 Q And can you tell us briefly what
17 that involved.

18 A They had a formal Order of
19 Investigation against Texas Independent
20 Securities, and I got dragged into that cause
21 I was an associate of the guy who owned--I'm
22 one of the co-owners of the brokerage firm.

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1 They were--they're trying to establish that we
2 were involved in some shenanigans involving
3 blank check, blind pool companies.

4 Q And do you remember the outcome of
5 that litigation?

6 A They dropped it.

7 Q They dropped?

8 A Yes.

9 Q And do you remember the outcome of
10 the first suit you mentioned?

11 A We agreed to waive the statute of
12 limitations and nothing's ever happened.

13 Q There was no--well, when you say
14 "waive the statute of limitations," meaning
15 that the case could go forward?

16 A Yes.

17 Q And then they didn't--they--

18 A Nothing really has ever happened.
19 Nothing ever happened.

20 Q Okay. And I take it the SEC, the
21 deposition took place in Washington?

22 A No. It took--actually took place

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1 in Fort Worth, Texas. The regional office.

2 Q All right. Okay. How about the
3 other two?

4 A That's all. That's it.

5 Q That's it, that you can remember,
6 you mean?

7 A Yes. No. That's it as far as I
8 know.

9 Q Which is two?

10 A Yes, sir.

11 Q Okay. I thought you said three
12 before.

13 A No.

14 Q Okay. Well, as you can see, this
15 will proceed in this way, and since you've
16 been deposed before you'll know. I'll be
17 asking you a series of questions and your
18 answers are going to be recorded by our court
19 reporter. Because of that, you need to speak
20 up and answer clearly.

21 The court reporter can't recognize
22 a nod of the head or a shake of the head. If

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1 you don't remember something, we understand
2 that there may be a long passage of time for
3 you to recall the answer. So if you're in
4 doubt about something, say you're in doubt.
5 If you don't recall, say you don't recall.
6 You don't have to worry if you're not
7 remembering the specifics of something.

8 We ask you to take your time.
9 Don't race through. Try to give us the most
10 complete, truthful answer that you can. If
11 you don't understand a question, just ask me
12 to repeat it or ask me to clarify it. I'll be
13 happy to do that.

14 Now, you have an attorney here
15 with you today; is that correct?

16 A Yes, sir.

17 Q And can you identify him for us.

18 A William Silva, sitting to my
19 right.

20 Q Yes. Perhaps we should identify
21 the parties. I don't know that we've done
22 that yet.

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1 MS. SINGH: All right. I believe,
2 for the record, Enforcement Bureau counsel is
3 represented in this docket, which by the way
4 is EB Docket 07-147. I'm Anjali Singh for the
5 record. My co-counsel is Gary Oshinsky. We
6 are conducting the deposition of Pendleton
7 Waugh.

8 MR. OSHINSKY: Okay. We can ask
9 the other parties to identify themselves.

10 MS. SINGH: Please identify
11 yourself.

12 MR. SILVA: William Silva on
13 behalf of Pendleton Waugh.

14 MR. OSHINSKY: And Mr. Waugh,
15 would you identify yourself.

16 THE WITNESS: Pendleton Cobb
17 Waugh.

18 MR. OSHINSKY: Okay.

19 BY MR. OSHINSKY:

20 Q If you -- I want you to understand
21 that if you need a break at some time, if
22 you're tired, or your throat is dry, or

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1 something like that, just ask us for it.
2 That's not a problem. Also, if you need to
3 speak to your attorney, we would just ask that
4 if we're in the middle of a question, that
5 you--or if you're in the middle of an answer,
6 finish your answer, and then we'll take a
7 break and you can speak to your attorney.

8 In trying to give a complete
9 answer, you may recall during one of your
10 answers, that you could have given a more
11 complete answer to a prior question, even if
12 it was hours ago or days ago. If that
13 happens, we ask you to tell us that you need
14 to clarify a prior answer, or add to it, and
15 we're be happy to give you the opportunity to
16 do that.

17 You also may, in giving an answer
18 you may realize that there are some documents
19 that might help you to answer more completely.
20 If that's the case, let us know and we may
21 have those documents here, or we might be able
22 to obtain them so that you can review them.

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1 If you, in answering a question, realize that
2 there's a document that you need that is not
3 here, that was not provided to the FCC, and we
4 covered this prior to beginning the
5 deposition, would you please tell us and we'll
6 ask you to simply agree to get us that
7 document within ten days of the deposition
8 end.

9 Okay. Now I have to ask you a
10 series of questions that I have to ask, either
11 I or Anjali will ask at the beginning of each
12 section, and that is, are you taking any
13 medication or any drugs today, that might make
14 it difficult for you to hear, understand and
15 answer my questions?

16 A No, sir.

17 Q Have you had anything alcoholic to
18 drink in the last eight hours?

19 A No sir.

20 Q Are you sick at all today?

21 A No, sir.

22 Q Are you currently under a doctor's

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1 care for illness?

2 A No, sir.

3 Q Is there any reason you can think
4 of that you can't hear, understand, and answer
5 my questions completely, truthfully?

6 A No, sir.

7 Q All right. I think you've
8 provided it, but for the record, would you
9 give your full name.

10 A Pendleton Cobb Waugh.

11 Q Okay. And what is your address?

12 A 6633 E. Greenway Parkway,
13 Apartment 1125, Scottsdale, Arizona 85254.

14 Q Thank you, and how old are you?

15 A Fifty-nine years old.

16 Q And what is your marital status?

17 A Divorced.

18 Q Do you have any children?

19 A No.

20 Q What was the highest level of
21 education you've attained in school?

22 A Got a master's degree in taxation

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1 from New York University in 1981.

2 Q And you also have a law degree?

3 A Yes, sir.

4 Q And where is that from?

5 A Vanderbilt.

6 Q Are you currently employed?

7 A Yes, sir.

8 Q And who do you work for?

9 A I'm a co-owner of a company called
10 Smartcomm, LLC.

11 Q And are you doing any other work
12 besides that, your work with Smartcomm?

13 A No, sir.

14 Q How long have you been working
15 with Smartcomm?

16 A We started the company in fall of
17 2007.

18 Q When you say "we," who is we?

19 A Carole Downs and myself.

20 Q Carole Downs -- who she is, and
21 how long you've known her, how you came to be
22 associated with her?

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1 A I met her on Match.com, actually,
2 and went on a date, and explained the
3 situation to her. I'd come back to Phoenix in
4 the middle of May 2007 to pick up my car,
5 which had been left there. I'd been gone for
6 about six months, and Preferred Communications
7 Systems, Inc. had an office in Scottsdale, a
8 marketing office, and it had been abandoned,
9 and I decided to try to revive the office, and
10 Ms. Downs, who was in--was a real--been a real
11 estate broker for a long time in the Phoenix
12 area, and the real estate market there was
13 imploding rapidly and she was looking to do
14 something else to try to generate income and
15 maintain her standard of living, and then she
16 decided to try to get involved in the wireless
17 communications industry with me, and see if we
18 couldn't build a successful business.

19 Q Now at that time, the office you
20 were reviving was it for PCSI? Or was it for
21 Smartcomm?

22 A No. It was--the idea was, I was

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1 going to try to take the office over, Mr.
2 Austin had abandoned it, and I was going to
3 try to work out an arrangement with him. I
4 sent him a memorandum about that, a couple of
5 them, actually, and try to see if we couldn't
6 -- the furniture was still there, computers
7 were still there, printers were still there,
8 copiers were still there, files were still
9 there. Phones. You know, it was just--just
10 a complete office, it was just nobody there.
11 I thought I could start a business using that
12 office and pay, sublease the space from
13 Preferred, try to work something out with Mr.
14 Austin and move forward.

15 Q Now is that when you decided to
16 start Smartcomm? Or had it been--

17 A Actually, I didn't really have any
18 idea what I was going to do at the time. But
19 it evolved into starting Smartcomm a couple
20 months later.

21 Q Okay. And about what time period
22 is this?

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1 A This would be June of 2007. June,
2 July.

3 Q Okay. And what was her function
4 there at the new office? At the old office,
5 I guess, that you revived.

6 A Well, she got on the phone and
7 tried to generate some sales, tried to raise
8 some money.

9 Q All right. I was going to go into
10 this later but maybe now is a good time. What
11 was it you were trying to generate sales for?

12 A Well, we were trying to persuade
13 Mr. Austin to conduct another offering for
14 Preferred and raise money so that Preferred
15 could move forward.

16 Q This is in June of 2007?

17 A Yes, sir.

18 Q Okay. And what was the result of
19 those--

20 A Well, for several months, nothing
21 happened, and finally, Preferred came out with
22 an offering and we tried to sell it, sell at

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1 least some of it. It took three or four--it
2 was about four months later, September,
3 October.

4 Q Of 2007?

5 A Yes, sir.

6 Q And what was the--do you know,
7 what was the offering for through the company?

8 A I think it was a Series B
9 preferred stock offering.

10 Q And can you give us a few
11 specifics of that.

12 A Can you explain your question.

13 Q Well, I mean, the specifics of
14 what kind of investment was required. That
15 type of thing.

16 A I think it was 360 units. Let me
17 see. I think it was 2000 shares per unit.

18 Q Okay.

19 A 7.50 per share. I'm working on
20 it.

21 Q Okay. Go ahead.

22 A I'm working on it.

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1 Q I don't want to cut you off.

2 A 360 share units. 3000 shares per
3 unit. 7.50 per share. They came up--or Mr.
4 Austin decided to add warrants to it, so it
5 was 2000 shares and 2000 Class B common stock
6 purchase warrants. The warrants were
7 exercisable at a very low price, I think it
8 was either a dime or penny per share, and the
9 exercise period was five years.

10 Q And was the offering ultimately
11 made? Was the offering made by PCSI?

12 A Yes, sir.

13 Q Okay. And that's in October 2007?

14 A Yes, sir.

15 Q Do you remember--did you have much
16 response to the offer?

17 A Well, initially, it was very
18 difficult to sell it, and then as months went
19 on, we had some more success. We had quite a
20 bit of success in, actually, January and
21 February of 2008. Then we were--we were
22 fired, so we stopped raising money.

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1 Q Okay. Again there--I'm sort of
2 getting ahead of myself here. But when you
3 say you were fired, how did that occur? Who
4 were you fired by, actually?

5 A Mr. Austin.

6 Q Okay. And can you give us a
7 synopsis of how that occurred, and the--

8 A Well, he--mostly Ms. Downs was
9 negotiating with him. She couldn't get--she
10 could never get him to execute a written
11 agreement with Smartcomm, and she couldn't get
12 a sublease on the space. Then we couldn't get
13 paid. He was sending in--he was sending us
14 false reports about sales and he wasn't paying
15 us properly, then he wasn't paying us at all.

16 And then we were informed over the
17 phone by someone at Preferred--it wasn't Mr.
18 Austin--that we were fired. So that was the
19 end of the relationship.

20 Q Who was the person who actually
21 lowered the ax?

22 A It was either Linda McClain or

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1 Michael Lawler.

2 Q When you say that there were false
3 reports filed, do you mean that he was
4 underinflating, or overinflating sales?

5 A No. He was--he wasn't reporting
6 all the sales.

7 Q Wasn't reporting all the sales.

8 A So we were--we weren't being paid
9 on all of the sales, so we were being
10 underpaid. They had what were called
11 moneytracker sheets, you know, Excel
12 spreadsheets, and we became aware that certain
13 people had sent money in and they weren't on -
14 - included on the spreadsheets and we weren't
15 being paid, and we tried to resolve that.
16 Carole did. I wasn't involved in any of
17 those. And he just wouldn't pay us.

18 Q Any reason that you know of
19 besides the obvious reason?

20 MR. SILVA: Well, what would that
21 be?

22 MR. OSHINSKY: That he just didn't

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1 want to pay?

2 THE WITNESS: No. He just didn't
3 want to pay.

4 BY MR. OSHINSKY:

5 Q Have any estimate about how much
6 money you were owed?

7 A Carole would know. Ms. Downs
8 would know. She was just reporting it to me.
9 Tens of thousands of dollars.

10 Q In a ballpark, 50,000, 100,000?

11 A I don't know. She would know.

12 Q But it's tens of thousands?

13 A Yes, sir.

14 Q All right. Let me go back to
15 where I was. You mentioned that you had given
16 some memos about reopening this office for
17 Preferred?

18 A Yes, sir.

19 Q Do you know whether those memos
20 were forwarded to the FCC?

21 A I believe they were.

22 MR. OSHINSKY: Can we go off the

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1 record for a second.

2 (Whereupon, the above-entitled
3 Matter went off the record at 9:45 a.m. and
4 resumed at 9:46 a.m.)

5 BY MR. OSHINSKY:

6 Q Can you tell us what previous
7 employment you've had before Preferred.

8 A How far back?

9 Q Well, I mean, we have a limited
10 amount of time, but I mean at least a few
11 years before Preferred.

12 A Let's see if I can do this. I
13 graduated from law school in 1977.

14 MR. SILVA: You know, we have
15 answered this in interrogatories, extensive e-
16 mail -- I don't know if your--the purpose of
17 getting it again.

18 MS. SINGH: We'll get to it. Part
19 of it is background but part of it is we will
20 get to specific questions about the
21 employment.

22 MR. OSHINSKY: Yes. I'm not going

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1 to belabor this. But we do want to get some
2 background information.

3 THE WITNESS: I clerked for
4 Justice William J. Harbison on the Tennessee
5 Supreme Court for a year. I worked as an
6 associate at Sutherland Asbill & Brennan in
7 Atlanta, for a year. I went to New York
8 University. It took me two years to get a
9 degree. I worked at a law firm called Vial,
10 Hamilton, Koch, Tubb, Knox & Stradley for a
11 year.

12 I went off on my own with a
13 gentleman, James C. Ash. And then went off on
14 my own in 1984, had my own law practice for 11
15 years. I started--

16 BY MR. OSHINSKY:

17 Q All right. Can I stop you there
18 for a second, so that we don't get too far
19 afield.

20 A Okay.

21 Q What kinds of legal--or what kind
22 of legal practice did you have? What were

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1 your areas of specialty?

2 A Corporate securities tax.
3 Appellate litigation.

4 Q Okay. And you did that for how
5 long?

6 A Eleven years.

7 Q Who were your clients at that
8 time?

9 A I had a number--

10 Q Typically.

11 A Usually small private companies
12 which wanted to raise money. I specialized in
13 doing reverse mergers with blind pool shells.
14 We did about 40 transactions between 1984 and
15 1989. Beginning in 1988, I did a lot of work
16 for the principals of the Cellular
17 Corporation, which was a cellular application
18 preparation firm in Lakewood, Ohio. Helped
19 them put together a company, raised several
20 million dollars with a reverse merger. That's
21 how I got involved in the wireless
22 communications industry.

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1 Q And that was about, around what
2 time?

3 A 1988.

4 Q Okay. Anything else of note?

5 A Then I started Express
6 Communications in 1990. We raised money,
7 merged with a shell, primarily an application
8 preparation firm--

9 Q Can I interrupt you for a second,
10 just so that again, we don't wander too far
11 afield. Or I don't. When you started Express
12 Communications, were you still operating as an
13 attorney?

14 A Yes, sir.

15 Q And Express was part of your legal
16 practice?

17 A Yes, sir.

18 Q Okay. Did there come a time when
19 your legal practice ended and you just became
20 a business owner or operator?

21 A 1991 and 92.

22 Q And why did you stop your legal